MEGAT HALIM MEGAT OMAR A

v.

PP

COURT OF APPEAL, PUTRAJAYA B
LOW HOP BING JCA
ABDULL HAMID EMBONG JCA
AHMAD MAAROP JCA
[CRIMINAL APPEAL NO: P-05-86-04]
28 OCTOBER 2008 C

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in 797.59 grams cannabis - Appeal against conviction and sentence - Whether appellant's conduct in reply to queries made, before administering of caution, admissible evidence - Whether appellant's cautioned statement admissible evidence - Whether appellant had exclusive control and custody of drugs* D

The appellant appealed against his conviction and sentence for trafficking in 797.59 grams of cannabis under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). The facts showed that a police chief inspector ('SP9') and his men raided the appellant's house upon information received. The appellant opened the main door when SP9 knocked on it and introduced himself. SP9 then asked the appellant if he kept any illegal items in the house. The appellant brought SP9 to a room and produced a black cigarette box ('JPS box'). Upon inspection of the JPS box, it was found to contain cannabis. SP9 immediately cautioned the appellant and recorded it on a piece of paper. Following the caution, SP9 asked the appellant some questions to which he answered and confessed that the said drugs were his. SP9 then asked him whether he kept anymore drugs to which the appellant answered in the affirmative and produced another brown bag containing cannabis. Upon further inspection of the room, SP9 found two other plastic bags containing cannabis. E F G H

In this appeal, the issues raised were: (1) whether the appellant's conduct in reply to the queries made by SP9, before the administering of the caution, was admissible as the appellant claimed that the circumstances under which those questions were asked and the manner in which they were posed showed that he was under arrest; (2) whether the cautioned statement ('P12') made by the appellant was admissible; and (3) whether the I

A appellant had exclusive custody and control of the said drugs as the appellant claimed that the room in which they were found in was also accessible to his two brothers.

Held (dismissing the appeal)

B **Per Abdull Hamid Embong JCA delivering the judgment of the court:**

(1) The evidence did not show that any arrest had been effected on the appellant at the material time. There was no evidence of force or physical restraint on the appellant. There was no question by the appellant put to SP9 on that issue throughout his testimony. The appellant also did not raise the matter during his testimony. Nor was there any mention by him that he felt threatened, afraid or restrained. Conversely, the evidence showed that the appellant told another police officer, SP10, before the caution was read, not to arrest him, thus showing that he knew that he was not under arrest at the material time. (paras 21, 22 & 23)

(2) The correct statement on when an arrest occurs is as stated by Lord Devlin in the Privy Council case of *Shaaban & Ors v. Chong Fook Kam & Anor*, *ie*, "An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make enquiries". (para 24)

(3) Section 15 Criminal Procedure Code states the law on arrest. There is a close correlation to art. 5(3) of the Federal Constitution which requires an arrested person to be informed of the grounds of his arrest. In the present case, the appellant was not so informed. Further, in *Jayaraman & Ors v. PP*, Suffian LP stated that the facts of each case will determine if an arrest had actually occurred. Therefore, the surrounding circumstances including the fact that the appellant knew that he was arrested would determine if the arrest had actually been effected. In the circumstances of the case, the appellant was not yet arrested when he answered the initial question put to him by SP9. As such, his answers to those questions were admissible. Also, the admissibility of that piece of

evidence was a question of fact, as found by the trial judge and should not be interfered with at the appellate stage. (paras 25, 26, 27, 28, 29, 30 & 31) A

(4) The initial discovery of the cannabis in the JPS box was a direct consequence of the information given by the appellant. As such, the appellant's conduct relating to the discovery of that incriminating cannabis must be admissible under s. 27 of the Evidence Act 1950. Further, the appellant's action in bringing SP9 to the recovery of the cannabis in the JPS box was in fact a confession, *albeit* a non-plenary one. (para 32, 33 & 34) B C

(5) The circumstances in which P12 was given was not oppressive on the appellant. The purpose of conducting a trial within a trial was for the court to determine that the conditions to the admissibility of the statement made pursuant to s. 37A(1)(b) DDA by the appellant were satisfied. In that instance, the crucial condition of voluntariness of that statement had been fully evaluated by the learned judge in that exercise. The learned judge made a correct finding on that issue when he concluded that the prosecution had proven beyond a reasonable doubt that P12 was not made in consequence of any threat, inducement or promise. There was no reason to differ with that finding of facts made by the learned judge after a full-scale trial within a trial. (paras 42, 43, 44, 45 & 46) D E F

(6) There was no flaw in the learned judge's reasoning and his conclusion and inferences of the facts in respect of the appellant's exclusive control and custody over the cannabis found. In fact, a serious discrepancy emerged in the appellant's own testimony, one that discredited the credibility of his defence. (paras 61 & 62) G

(7) Although in our criminal jurisprudence, there is no burden on an accused to prove his innocence but merely for him to raise a reasonable doubt as to his guilt, it is trite that his defence should be put to the prosecution at an early stage during the prosecution case. Failure to do so may move the trial court to dismiss a particular line of defence as an afterthought, or a recent invention. (para 63) H I

A **(8)** The trial judge was right in finding that the appellant's defence as suspicious or inherently improbable. (para 68)

Bahasa Malaysia *Translation Of Headnotes*

B Perayu merayu terhadap sabitan dan hukumannya kerana mengedar 797.59 gram kanabis di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'). Fakta menunjukkan bahawa seorang Cif Inspektor Polis ('SP9') bersama beberapa anggotanya telah menyerbu rumah perayu atas maklumat yang diterima. Perayu
C membuka pintu utama rumahnya apabila SP9 mengetuk pintu sambil memperkenalkan diri. SP9 bertanya kepada perayu sama ada ia ada menyimpan barang salah di rumahnya dan perayu membawa SP9 ke sebuah bilik dan mengeluarkan satu kotak rokok berwarna hitam ('kotak JPS'). Kotak JPS diperiksa dan ia didapati
D mengandungi kanabis. SP9 kemudian terus memberi amaran kepada perayu dan merekodkannya atas sekeping kertas. Ekoran amaran tersebut, SP9 bertanyakan beberapa soalan lagi kepada perayu di mana perayu menjawab dan mengakui bahawa dadah tersebut adalah miliknya. SP9 kemudian bertanya sama ada perayu ada
E menyimpan dadah-dadah lain di mana perayu menjawab secara afirmatif dan mengeluarkan satu beg berwarna coklat yang mengandungi kanabis. SP9 terus memeriksa bilik dan menemui dua lagi beg plastik yang mengandungi kanabis.

F Dalam rayuan di sini, isu-isu yang dibangkitkan adalah: (1) sama ada kelakuan perayu apabila menjawab pertanyaan-pertanyaan SP9, sebelum amaran diberi, boleh diterimamasuk mengambilkira dakwaan perayu bahawa situasi di mana soalan-soalan ditanya dan cara bagaimana soalan-soalan tersebut dikemukakan menunjukkan bahawa beliau berada di bawah tangkapan; (2) sama ada
G kenyataan beramaran ('P12') yang dibuat oleh perayu boleh diterimamasuk; dan (3) sama ada perayu mempunyai jagaan dan kawalan ekslusif terhadap dadah-dadah memandangkan dakwaan perayu bahawa bilik di mana dadah dijumpai juga boleh diakses oleh dua adik beradiknya.

H **Diputuskan (menolak rayuan)**
Oleh Abdull Hamid Embong HMR menyampaikan penghakiman mahkamah:

I **(1)** Keterangan tidak menunjukkan bahawa satu tangkapan telah dibuat terhadap perayu pada waktu material. Tiada keterangan mengenai penggunaan kekerasan atau halangan fizikal terhadap perayu. Di samping itu tiada soalan dikemukakan kepada SP9

atas isu ini di sepanjang testimoni beliau. Isu ini juga tidak dibangkit oleh perayu semasa testimoninya. Tidak disebut oleh perayu bahawa beliau pada bila-bila masa merasa tergugat, takut atau terhalang. Keterangan sebaliknya menunjukkan bahawa perayu telah memberitahu seorang lagi pegawai polis, SP10, sebelum amaran dibaca, supaya jangan menangkapnya sekaligus menunjukkan bahawa beliau tidak ditangkap pada waktu material.

(2) Kenyataan yang betul tentang bila sesuatu tangkapan berlaku adalah seperti yang dinyatakan oleh Lord Devlin dalam kes Privy Council *Shaaban & Ors v. Chong Fook Kam & Anor*, iaitu, "suatu penangkapan berlaku bilamana seorang pegawai polis menyatakan dengan jelas bahawa beliau menangkap atau bila ia menggunakan kekerasan untuk menahan individu terbabit. Ia juga belaku apabila beliau, sama ada melalui lisan ataupun kelakuannya, mengisyaratkan dengan jelas bahawa beliau akan menggunakan kekerasan jika perlu bagi menghalang individu terbabit dari pergi ke tempat yang dihajatinya. Ia tidak berlaku jika individu di tahan hanya untuk membuat pertanyaan".

(3) Seksyen 15 Kanun Acara Jenayah berbicara tentang undang-undang tangkapan. Ia berkait rapat dengan fasal 5(3) Perlembagaan Persekutuan yang memerlukan orang yang ditangkap diberitahu alasan-alasan penangkapannya. Dalam kes semasa, alasan-alasan penangkapan tidak diberitahu kepada perayu. Selain itu, di dalam *Jayaraman & Ors v. PP*, Suffian LP menyatakan bahawa fakta-fakta kes akan menentukan sama ada tangkapan berlaku ataupun tidak. Oleh itu, halkeadaan keliling termasuk fakta bahawa perayu mengetahui bahawa beliau telah ditangkap akan mementukan sama ada suatu tangkapan telah berlaku. Dalam halkeadaan kes ini, perayu belum lagi ditangkap apabila beliau menjawab soalan-soalan awal yang ditanyakan oleh SP9. Oleh itu, jawapan beliau kepada soalan-soalan tersebut adalah boleh diterimamasuk. Selain itu, keterimaan-masuk keterangan ini adalah persoalan fakta yang didapati oleh hakim bicara dan kerana itu tidak harus diganggu gugat di peringkat rayuan.

(4) Penemuan awal kanabis di dalam kotak JPS adalah akibat dari maklumat yang diberikan oleh perayu. Oleh itu, kelakuan perayu berhubung penemuan barang terlarang tersebut haruslah boleh diterimamasuk di bawah s. 27 Akta Keterangan

A 1950. Selain itu, tindakan perayu membawa SP9 kepada penemuan tersebut adalah sebenarnya satu pengakuan, walaupun bukan pengakuan yang mutlak.

(5) Halkeadaan dalam mana P12 diberi tidak bersifat opresif
B terhadap perayu. Tujuan mengadakan perbicaraan dalam perbicaraan adalah untuk mahkamah menentukan bahawa syarat-syarat bagi penerimaan-masuk kenyataan yang dibuat di bawah s. 37A(1)(b) DDA telah dipenuhi. Dalam hal ini, syarat penting kesukarelaan kenyataan yang dibuat telah pun dinilai
C oleh yang arif hakim bicara. Yang arif hakim bicara telah membuat dapatan yang betul atas isu ini apabila beliau merumuskan bahawa pendakwaan telah membuktikan di luar keraguan munasabah bahawa P12 tidak dibuat di bawah pengaruh ugutan, pujukan ataupun janji. Tiada alasan untuk
D tidak bersetuju dengan dapatan-dapatan fakta yang arif hakim ini yang dicapai setelah mengadakan satu perbicaraan dalam perbicaraan penuh.

(6) Tiada kecacatan pada taakulan yang arif hakim serta dengan
E konklusi dan andaian-andaian fakta beliau berkaitan soal jagaan dan kawalan ekslusif perayu terhadap kanabis yang ditemui. Sebaliknya, terdapat percanggahan serius pada testimoni perayu yang mana telah menjejaskan kredibiliti pembelaannya.

(7) Walaupun dalam jurisprudens jenayah kita tiada beban di pihak
F tertuduh untuk membuktikan ketidakbersalahannya dan bahawa beliau hanya perlu membangkitkan keraguan munasabah terhadap kebersalahannya, namun hakikatnya adalah bahawa sebarang pembelaan hendaklah dikemukakan kepada pihak pendakwa pada peringkat awal kes pendakwaan. Kegagalan
G berbuat demikian mungkin menyebabkan mahkamah bicara berpendapat bahawa sesuatu jalur pembelaan itu adalah 'afterthought' atau rekaan yang baru dibuat.

(8) Hakim bicara betul dalam mendapati bahawa pembelaan
H perayu adalah mencurigakan atau secara semulajadinya amat tidak mungkin.

Case(s) referred to:

AEG Carapiet v. AY Derderian AIR [1961] Cal 359 ***(refd)***

Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***

I *Jayaraman Velayuthan & Ors v. PP [1982] CLJ 464; [1982] CLJ (Rep) 130 FC* ***(refd)***

Kuli & Ors v. Emperor AIR [1930] Cal 442 ***(refd)***

PP v. Dato Seri Anwar Ibrahim (No 3) [1999] 2 CLJ 215 HC ***(refd)***
PP v. Rosyatimah Neza & Anor [1989] 1 CLJ 481; [1989] 2 CLJ (Rep) 364 HC ***(refd)***
Shaaban & Ors v. Chong Fook Kam & Anor [1969] 2 MLJ 219 ***(refd)***
Wai Chan Leong v. PP [1989] 2 CLJ 1168; [1989] 1 CLJ (Rep) 171 SC ***(refd)***
Wong Swee Chin v. PP [1981] 1 MLJ 212 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 15
Dangerous Drugs Act 1952, ss. 37A(1)(b), 39B(1)(a)
Evidence Act 1950, s. 27
Federal Constitution, art. 5(3)

For the appellant - Amer Hamzah Arshad (Rubini Murugesan with him); M/s Zain & Co
For the respondent - Samsudin Hassan DPP

[Appeal from High Court, Pulau Pinang; Criminal Trial No: 45-11-2001]

Reported by Usha Thiagarajah

JUDGMENT

Abdull Hamid Embong JCA:

[1] The appellant, Megat Halim, was convicted and sentenced by the High Court Penang for an offence of drugs trafficking of 797.59 grammes of cannabis, under s. 39B(1)(a) Dangerous Drugs Act 1952 (DDA).

[2] We dismissed his appeal and now give our reasons.

[3] The facts show that on 17 March 2000 at 11.25pm, Cif Inspector Rajaram (SP9) and seven of his men from the Narcotics Division, upon information received, raided the appellant's house at Block 111-B-4-3, Hilir Pemancar, Gelugor, Penang.

[4] When SP9 knocked on the main door the appellant opened it. In the house was SP7, the appellant's wife and their two young children, sleeping in the first bedroom.

[5] SP9 introduced himself as a police officer and asked the appellant if he kept any illegal items in the house, the exact question being "Ada kamu simpan apa-apa barang salah dalam rumah?"

[6] The appellant then brought SP9 to the second room and produced one black cigarette box (JPS brand) from underneath a bag found on the floor of that room.

[7] Upon inspection of the JPS box it was found to contain dried leaves suspected to be cannabis.

[8] SP9 immediately cautioned the appellant pursuant to s. 37A(1)(b) DDA – the caution being so worded:

> adalah menjadi kewajipan saya memberi amaran kepada kamu bahawa kamu tidak diwajibkan berkata apa-apa atau menjawab apa-apa soalan, tetapi apa- apa jua yang kamu nyatakan samada sebagai menjawab kepada sesuatu soalan atau tidak boleh diberi sebagai keterangan.

[9] That caution was recorded by SP9 on a piece of paper. The contents of that piece of paper was admitted by the learned trial judge as an exh. P12 after conducting a trial within a trial.

[10] Following that caution, SP9 asked the appellant the following questions to which the appellant answered:

Soalan: Boleh kamu beritahu saya apa yang ada dalam bekas warna hitam jenama JPS ini?

Jawapan: Ganja

Soalan: Siapa punya?

Jawapan: Saya punya.

[11] SP9 then asked the appellant this question "Ada kamu simpan lagi dadah ganja", to which the appellant responded "Ada sikit".

[12] The appellant then brought SP9 to a wardrobe in that second bedroom and pointed to SP9 to a brown bag kept in a wardrobe.

[13] When SP9 retrieved the bag he asked the appellant these questions:

Soalan: Boleh kamu beritahu saya apa yang ada dalam beg warna brown ini?

Jawapan: Ganja

Soalan: Berapa banyak?

Jawapan: 1/2 kilo.

[14] SP9 then inspected the contents of the bag and found it to contain a slab of dried leaves, later confirmed to be cannabis, wrapped in transparent plastic, a plastic packet containing smaller plastic packets, and a knife. A

[15] SP9 then inspected the room further and found within the folds of a pair of trousers, two white plastic bags both containing dried cannabis. B

[16] Arguments on this appeal centered around three issues which are now separately discussed. C

[17] The first issue was whether the appellant's conduct in reply to the queries made by SP9, before the administering of the caution, was admissible.

[18] It was submitted by learned counsel that the circumstances under which those questions were asked and the manner in which they were posed showed that the appellant was actually under arrest. D

[19] And since no caution was given in relation to those questions, the answers given by the appellant were thus inadmissible under s. 37A DDA. E

[20] As regards the allegation that the appellant was already arrested at that point, learned Counsel relied on *PP v. Rosyatimah bte Neza & Anor* [1989] 1 CLJ 481; [1989] 2 CLJ (Rep) 364, a High Court case which held that: F

> a person is under arrest already if he is in a state of being watched or guarded to prevent his escape, or from circumstances it can be implied that his personal liberty has been restrained. G

[21] The evidence however did not show us that any arrest had been effected on the appellant at that point. There was no evidence of force or physical restrain on the appellant. There was no question by the appellant put to SP9 on this issue throughout his testimony. H

[22] The appellant during his testimony also did not raise this matter. Nor was there any mention by him that he felt threatened or afraid or that he was restrained. I

[23] Conversely, the evidence shows that the appellant told SP10 (L/Kpl. Logason) before the caution was read, not to arrest him, thus showing that he knew then that he was not then under arrest.

[24] In our view the correct statement on when an arrest occurs is as stated by the Privy Council in *Shaaban & Ors v. Chong Fook Kam & Anor* [1969] 2 MLJ 219, in these words of Lord Devlin, stating:

> An arrest occurs when a police officer states in terms that he is arresting or when he uses force to restrain the individual concerned. It occurs also when by words or conduct he makes it clear that he will, if necessary, use force to prevent the individual from going where he may want to go. It does not occur when he stops an individual to make enquiries.

[25] Section 15 Criminal Procedure Code states the law as follows:

> (i) In making an arrest the police officer … making the arrest shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word of action.
>
> (ii) If such person forcibly resist the endeavour to arrest him or attempt to evade the arrest such officer … may use all means necessary to effect the arrest.

[26] There is of course a close correlation to art. 5(3) of the Federal Constitution which requires an arrested person to be informed of the grounds of his arrest. The appellant was not so informed.

[27] In *Jayaraman Velayuthan & Ors v. PP* [1982] CLJ 464; [1982] CLJ (Rep) 130, Suffian LP stated that the facts of each case will determine if an arrest had actually occurred.

[28] Thus we say that the surrounding circumstances including the fact that the appellant knew that he was arrested would determine if the arrest had actually been effected.

[29] In our view, in the circumstances of this case, the appellant was not yet arrested when he answered the initial question put to him by SP9.

[30] As such, we find his answers to those questions as admissible. A

[31] It is also our view, the admissibility of this piece of evidence is a question of fact, as found by the trial judge, should not be interfered at this appellate stage. B

[32] We also find that the initial discovery of the cannabis in the JPS box is a direct consequence of the information given by the appellant.

[33] As such the appellant's conduct relating to the discovery of that incriminating cannabis must be admissible under s. 27 of the Evidence Act. (see *Wai Chan Leong v. PP* [1989] 2 CLJ 1168; [1989] 1 CLJ (Rep) 171 – Supreme Court). C

[34] And we find that the appellant's action in bringing SP9 to the recovery of the cannabis in the JPS box is in effect a confession, *albeit* a non-plenary one. D

[35] The second issue raised was on the admissibility of the cautioned statement (P12) made by the appellant. E

[36] A trial within a trial was held by the learned judge, after which His Lordship found P12 to have been voluntarily made and as such was admissible in evidence.

[37] The submission against the admissibility of P12 was two-pronged. F

[38] Firstly, it was argued that no caution was administered. Secondly, it was contended that P12 was not voluntarily given.

[39] A full-fledged *voire dire* was held in which the learned trial judge found on the facts that the statutory caution under s. 37A(1)(b) DDA was indeed administered to and understood by the appellant. G

[40] Reading P12 itself, we find that a few simple questions were put to the appellant as regards the cannabis recovered from the brown bag to which the appellant had admitted that it belonged to him. H

I

[41] The learned trial judge also took into consideration, the testimony of the appellant's wife who could not confirm whether the appellant had been coerced into making the confession as he did in P12. The learned judge concluded that P12 had been voluntarily given.

[42] From our own scrutiny of the evidence, we hold that the circumstances under which P12 was given was not oppressive on the appellant.

[43] The purpose of conducting a trial within a trial is for the court to determine that the conditions to the admissibility of a statement made pursuant to s. 37A(1)(b) DDA by the appellant are satisfied.

[44] In this instance, the crucial condition of voluntariness of that statement had been fully evaluated by the learned judge in that exercise.

[45] We hold that the learned judge had made a correct finding on this issue when he concluded that the prosecution had proven beyond a reasonable doubt that P12 was not made in consequence of any threat, inducement or promise.

[46] We find no reason to differ with that finding of facts made by the learned judge after a full scale trial within a trial.

[47] The third and final issue was whether the appellant was in exclusive control and custody over the cannabis found in the second room of his house.

[48] The learned trial judge had called upon the defence when he found that the appellant was in possession of those drugs, based on direct evidence adduced by the prosecution.

[49] In his defence the appellant contended that the room from which those drugs were found was also accessible to the appellant's brothers, Megat Harun and Megat Haris.

[50] Thus, the closet in that room, from which the brown bag containing the drugs were recovered was also accessible to others.

[51] It was also submitted that it was not determined who was the owner of the jeans from which the other drugs were recovered. As such it cannot be inferred that the appellant had exclusive control or custody of those drugs too.

[52] The learned trial judge upon evaluating the evidence had found as a matter of fact that the appellant had full knowledge of the drugs recovered in the brown bag. This fact came from his own admission pursuant to question under caution by SP9 that the cannabis found in the brown bag and in the JPS box, was his.

[53] It was also a finding of fact that the appellant and his family were the occupiers of the house, including the room from where the drugs were found.

[54] It was also the learned judge's finding that, that room was used to keep the appellant's clothing, meaning that it was in use by the appellant daily.

[55] The learned judge concluded that it was impossible, in the circumstances of those facts, to say that the appellant had no knowledge of those drugs.

[56] On the claim by the appellant in his defence that his two brothers had access to that room, this was rejected by the learned judge as unbelievable and not raising a reasonable doubt.

[57] The appellant's evidence itself shows that the brothers had no keys to the house and as such the trial judge concluded that they could not access the house whenever they like.

[58] The trial judge also dismissed the claim by the appellant that both Megat Haris and Megat Harun who had stayed in the room three months before the police raid, are drug addicts; thus implying that they could have left the drugs there.

[59] This defence was also found to be unbelievable by the learned judge who said that it would be most unlikely that a drug addict could have just left a big amount of drugs in a room used daily by the appellant.

[60] Our own perusal of the defence shows that the appellant's evidence had a gaping hole as regards Megat Harun being a resident of the second room from which the drugs were found. No serious questions were put to SP11, the investigating officer, regarding this matter, considering that this was the appellant's main thrust of defence.

[61] We find no flaw in the learned judge's reasoning and his conclusion and inferences of the facts.

[62] In our view, a serious discrepancy thus emerged in the appellant's own testimony, one that discredited the credibility of his defence.

[63] Although in our criminal jurisprudence, there is no burden on an accused person to prove his innocence but merely for him to raise a reasonable doubt as to his guilt, it is trite that his defence should be put to the prosecution at an early stage during the prosecution case. Failure to do so may move the trial court to dismiss a particular line of defence as an afterthought, or a recent invention as happened in this case.

[64] Raja Azlan Shah CJ (Malaya) (as His Highness then was) in *Wong Swee Chin v. PP* [1981] 1 MLJ 212 puts this principle in these now famous words:

> … there is a general rule that a failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of a witness's testimony.

[65] In our adversarial system, that principle is applicable in both civil and criminal trials.

[66] The appellant's defence can be ascertained not merely from his own evidence but also the line of cross-examination of the prosecution's witnesses (see *Kuli & Ors v. Emperor* AIR [1930] Cal 442, cited in *PP v. Dato Seri Anwar bin Ibrahim (No. 3)* [1999] 2 CLJ 215). This has been termed as a rule of essential justice.

[67] In *AEG Carapiet v. AY Derderian* AIR [1961] Cal 359, (also cited in the *Dato Seri Anwar*'s case), this principle was explained in this manner:

> It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examination that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share.

[68] It is our view that the trial judge was right in finding that the appellant's defence as suspicious or inherently improbable. We have however reminded ourselves that the trial court is still bound to consider that defence and that the obligation is upon the prosecution to prove its case beyond a reasonable doubt. (see *Alcontara a/l Ambross Anthony v. PP* [1996] 1 CLJ 705).

[69] In the circumstances, we would hold that this third ground of appeal is also without substance.

[70] For these reasons, this appeal was dismissed. We affirmed the conviction and sentence.